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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,799	01/09/2002	Frank Leymann	DE920000043US1 (183)	5078
46320 7590 11/09/2010 CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP STEVEN M. GREENBERG 950 PENINSULA CORPORATE CIRCLE SUITE 2022 BOCA RATON, FL 33487				
EXAMINER				
GOLD, AVIM				
ART UNIT		PAPER NUMBER		
2457				
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11/09/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/042,799

**Applicant(s)**

LEYMANN ET AL.

**Examiner**

AVI GOLD

**Art Unit**

2457

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is responsive to the amendment filed on July 21, 2010. Claim 15 was amended. Claims 19-29 were added. Claims 15-29 are pending.

#### ***Response to Amendment***

#### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 25-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 25 is a computer program product comprising a computer readable stored medium having stored therein computer usable program code for operating a computer system. The specification does not provide support as to what type of program product and what type of stored medium are used and thus the product and medium can include signals per se. As such, the claim is not limited to non-transitory, statutory subject matter and is therefore non-statutory.

Claims 26-29 are rejected as being dependent upon the rejection of claim 25 as they also fail to cure deficiencies noted in these claims.

#### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The computer hardware system of claims 20-24.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15, 19, 20, 24, 25, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoakum et al., U.S. Patent No. 6,421,674, further in view of Graham, U.S. Patent No. 7,730,019.

As to claim 15, Yoakum teaches a method of operating a computer system, wherein the computer system comprises an application client, a first application server configured to process requests of the application client, a second application server configured to process requests of the application client, and a database accessible by the first and second application servers, the method comprising:

a first application server (col. 4, line 23, Yoakum discloses a first proxy server 208);

receiving, by the first application server, a request from the application client to the first application server (col. 4, lines 23-27, Yoakum discloses messages, that include lookup requests, received from the gateway at the proxy server);

forwarding, by the first application server, the request to the second application server (col. 4, lines 32-43, Yoakum discloses the request forwarded to second proxy server 210);

receiving, by the second application server, the request from the first application server (col. 4, lines 43-47, Yoakum discloses the second proxy server receiving the message and returning a response to the first proxy server);

generating, by the second application server, a response to the request (col. 4, lines 43-47);

forwarding, by the second application server, the response to the first application server (col. 4, lines 43-47);

receiving, by the first application server, the response from the second application server (col. 4, lines 43-50, Yoakum discloses the first proxy server receiving the message from the second proxy server); and

forwarding, by the first application server, the response to the application client (col. 4, lines 49-51, Yoakum discloses the gateway receiving the response from the first proxy server).

Yoakum fails to teach the limitation further including detecting by the first application server that a database is not accessible and the first and second servers performing various actions while the database is not accessible.

However, Graham teaches the use of a data analysis system detecting that a database is not accessible and the handling of an unreadable database (col. 4, lines 43-51, col. 11, lines 21-22, col. 11, line 60 – col. 12, line 11).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Yoakum in view of Graham to detect, by the first application server, that a database is not accessible and the first and second servers performing various actions while the database is not accessible. One would be motivated to do so because it would be more efficient for a server to detect that a database is not accessible by it than to use a separate means for that function.

Regarding claim 19, Yoakum and Graham teach the method of claim 15, wherein the second application server generates the response to the request using the database while the database is not accessible by the first application server (Yoakum, col. 4, lines 23-51, Graham, col. 4, lines 43-51, col. 11, lines 21-22, col. 11, line 60 – col. 12, line 11).

Claims 20, 24, 25, and 29 do not teach or define any new limitations above claims 15 and 19 and therefore are rejected for similar reasons.

5. Claim 16-18, 21-23, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoakum and Graham, further in view of Holmberg, U.S. Patent No. 6,247,141.

As to claim 16, Yoakum and Graham teach the method of claim 15.

Yoakum and Graham do not explicitly teach wherein the response is received, from the second application server, to an input queue of the first application server.

However, Holmberg teaches a queue with the backup and primary servers (col. 6, lines 10-18, 29-40).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Yoakum and Graham in view of Holmberg wherein the response is received, from the second application server, to an input queue of the first application server. One would be motivated to do so because a queue is an efficient way to organize received data to be processed.

Regarding claim 17, Holmberg teaches the method of claim 16, further comprising transferring the response from the input queue of the first application server to an output queue of the first application server (col. 6, lines 10-18, 29-40).

As to claims 18, Yoakum and Graham teach the method of claim 15.

Yoakum and Graham do not explicitly teach wherein the response is received, from the second application server, into an output queue of the first application server.

However, Holmberg teaches a queue with the backup and primary servers (col. 6, lines 10-18, 29-40).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Yoakum and Graham in view of Holmberg wherein the response is received, from the second application server, into an output queue of the first application server. One would be motivated to do so because a queue is an efficient way to organize received data to be processed.

Claims 21-23 and 26-28 do not teach or define any new limitations above claims 16-18 and therefore are rejected for similar reasons.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 15-29 have been considered but are moot in view of the new ground(s) of rejection. New art is used for the independent claims.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,711,606 to Leymann et al.

U.S. Pat. No. 6,625,141 to Glietho et al.

U.S. Pat. No. 6,148,307 to Burdick et al.

U.S. Pat. No. 5,978,577 to Rierden et al.

U.S. Pat. No. 6,801,927 to Smith et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AVI GOLD whose telephone number is (571)272-4002. The examiner can normally be reached on M-F 8:30 a.m. to 5 p.m.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. G./  
Examiner, Art Unit 2457

/ARIO ETIENNE/  
Supervisory Patent Examiner, Art Unit 2457